

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 32 of 1997

in

SPECIAL CIVIL APPLICATION No 2151 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

VIJAY SAKHARAN SUDHALKAR

Versus

MUNICIPAL CORPORATION OF BARODA

Appearance:

MR NILESH M SHAH for Petitioner
MR PRANAV G DESAI for Respondent No. 1
SERVED BY DS for Respondent No. 3

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

Date of decision: 27/06/97

ORAL JUDGEMENT

Admitted. Mr.P.G.Desai, learned counsel for the respondent nos.1 and 2 appears and waives service of notice of admission. In the facts and circumstances, the appeal is taken for final hearing to day.

This appeal is directed against an order passed by the learned Single Judge in Misc. Civil Application No. 401 of 1996 in Special Civil Application No. 2151 of 1987 on March 19, 1996.

The main matter i.e. Special Civil Application No. 2151 of 1987 was filed by the appellant-petitioner for appropriate writ, direction or order, quashing and setting aside the resolution Annexure K passed by the Baroda Municipal Corporation, (respondent Corporation) and for consequential benefits. The petition was filed in 1987 and was admitted by issuing Rule thereon. It was placed for final hearing on March 30, 1996, but since nobody was present on behalf of the petitioner it was dismissed for non-prosecution. Misc. Civil Application, therefore, came to be filed for restoration. The learned Single Judge heard the parties and dismissed the Misc. Civil Application observing that action taken by the first respondent-Corporation could not be said to be illegal or unlawful.

The appellant was an employee of the first respondent Corporation. In 1980, he had gone abroad. For that purpose, he made an application which was granted and resolution was passed by the Standing Committee of the Corporation on January 3, 1980, by which he was permitted to go abroad for a period of two years and maximum for a period of three years subject to the final resolution to be passed by General Board. It appears that the General Board approved the decision of the Standing Committee and the appellant was permitted to leave country. It, however, appears that the petitioner remained in Abu-Dhabi for a longer period. After the period of three years was over, the appellant made an application from Abu-Dhabi requesting the Corporation to extend leave so as to enable him to stay there. The Deputy Commissioner informed the appellant that his case would be placed before the Standing Committee which would consider his prayer. It, however, appears that the Corporation did not agree to grant further time to the appellant and the appellant was informed that his prayer could not be granted and that he must come back and

report for duty. Some correspondence went on but the respondent Corporation did not grant permission. By a letter dt. February 20, 1984 (Annexure.H to the petition), the appellant informed the Municipal Commissioner that if no further time would be granted, he might be allowed to retire from service. The office of the first respondent Corporation replied on May 7, 1983 that he could not be retired taking into account the period of service for which the appellant had served and that he should submit resignation. It was also stated that if he would not submit resignation, action would be taken for terminating of his services. In December 1985, the appellant had returned to India and he informed the Corporation vide his letter dt. December 21, 1985 that he had come back and that he was willing to resume duties from January 1986. The appellant was, however, not allowed to resume duties and the impugned resolution was passed by the Corporation which was challenged in the present proceeding. By an order dt. January 19, 1987 resignation of the appellant was accepted with effect from May 7, 1983.

We have heard Mr.Nilesh Shah, learned counsel for the appellant and Mr.P.G.Deesai, learned counsel for the Respondent nos.1 and 2. Mr.Shah raised various contentions. He submitted that the appellant had never resigned and, therefore, it was not open to the respondent Corporation to accept resignation. He further contended that it is settled law that no resignation could be accepted with retrospective effect. When the resolution was passed in 1987, resignation could not have been made effective from May, 1983. To that extent, in any case, the resolution is contrary to law and requires interference. On merits, Mr.Shah submitted that because of personal problems and domestic difficulties, the appellant could not come back in time. Now, when he had come to India and had shown readiness and willingness to serve the Corporation, he should be permitted to do so. He submitted that the appellant is a qualified Engineer and his rich experience of working in foreign country can be utilised by the Corporation and the Corporation would not be prejudiced. On the contrary, by retiring him from service or by treating his service terminated, the Corporation would not be able to take services of the appellant.

Mr.Desai for the Corporation submitted that initially for a period of two years permission was granted. It could be and was extended upto three years but thereafter it was not extended. He stated that when the appellant was specifically informed that his application for further extension was rejected, it was incumbent upon the appellant to resume duties. He, however, did not do so. He further submitted that the learned Single Judge rightly observed that for better prospect and better earning, the appellant had gone to foreign country. If in the light of these facts, the learned Single Judge did not think it proper to exercise powers under Art.226 of the Constitution of India, it cannot be said that by not granting the prayer, the learned Single Judge has committed any error of law which requires interference.

In the facts and circumstances of the case, in our opinion, the order passed by the learned Single Judge does not require interference.

Initially, the appellant was granted time to go abroad. It was for a period of two years which could be extended upto three years. That was done. When that period of three years was not extended, it was obligatory on the part of the appellant to resume duty but the appellant failed to do so. Our attention was invited to a Government resolution dt. January 25, 1978. There is some dispute as to whether the provisions of the said resolution would apply to Corporation's employees. But even if it is assumed that the provisions of the resolution apply, they specifically provide that employee can remain continuously absent for a period of two years but in no case after three years. Admittedly here the petitioner had not reported for duty for five years. He had shown his readiness and willingness to resume duty in December 1985 with effect from January 1986. That is admittedly after five years.

Mr.Shah, however, stated that till March 1997, the name of the appellant continued in the pay roll. If it is so and if the appellant has acquired some experience and is ready and willing to render services to the Corporation at the most this court can grant him liberty to make an application and/or representation to take him in service. Of course, it is for the Corporation to take appropriate action but in the light of the facts and circumstances of his family which were brought to our notice as well as to the notice of the

Corporation, and which is clear from the record of this petition, we have no doubt that the Corporation will sympathetically consider his case and if it is permissible, to pass appropriate order in accordance with law and in light of the relevant rules and regulations. Mr. Shah stated that the appellant is ready to get an appointment even as a fresh employment. Liberty is also granted to the appellant to represent to the Corporation by requesting the Corporation not to give retrospective effect to the retirement/resignation from March 1983.

Except the above observations, the appeal requires to be disposed of and accordingly disposed of, however, with no order as to costs.

Dt. 27.6.1997. (C.K.THAKKER J)

(S.D.PANDIT J.)